

## **PUBLIC MEETING MINUTES**

October 27, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

### **Members Present**

Karen L. Neuwald, Chair  
Sally M. McKeag, Member  
Robin W. Wesley, Member  
Alice Dowdin Calvillo, Member

Tiffany Rystrom, Member, Excused

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

Chair Neuwald called the Board to order for a return to the open session of the October 16, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session on October 16, 2008, the Board has issued PERB Decision Nos. 1980, 1981-H and 1982. In Request for Injunctive Relief No. 599 (Sonoma County Law Enforcement Association (SCLEA) v. County of Sonoma), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member McKeag to close the October 16, 2008 public meeting.

**Ayes:** Neuwald, McKeag, Wesley, and Dowdin Calvillo.

**Motion Carried.**

Chair Neuwald opened the meeting of October 27, 2008 and Member McKeag led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member McKeag and seconded by Member Wesley that the Board adopt the minutes of the Public Meeting of PERB for October 16, 2008.

**Ayes:** Neuwald, McKeag, Wesley, and Dowdin Calvillo.

**Motion Carried.**

### **Comments From Public Participants**

None.

### **Unfinished/New Business**

Chair Neuwald turned to the next item on the agenda, which was unfinished and/or new business. That item, PERB's factfinding policy in light of budget reductions, was determined to be unfinished and/or new business so the Board could hear additional comments by the public and possibly take action on this subject. The funding for factfinding was eliminated from PERB's budget, but the proposed trailer bill language deleting PERB's requirement that it pay for factfinding services was not passed by the Legislature. Therefore, PERB is still required to pay for factfinding, but has no allocation from which to pay for such services. A determination of how to meet this statutory obligation needed to be made. Chair Neuwald stated that, although there would be no PERB staff reports today on this subject, there were documents made available to the public that provide background and further information. PERB staff would be available during the meeting to answer any questions that might arise during discussions. Before moving to public comment, Chair Neuwald asked Members of the PERB Board if they had any questions of staff regarding the documents made available at today's meeting.

Member Wesley looking at the documents mentioned the charts provided, which broke down factfinding daily rates by five-, three- and two-day contract maximums, plus additional costs. She asked for a general clarification on how factfinding contracts are issued.

Les Chisholm, Division Chief, Office of the General Counsel, provided a brief history on PERB's factfinding contracts. He explained that over time a daily rate was established. Early on the per diem rate was \$300-\$400 and gradually increased to \$600. This was prior to the 2002-2003 action, which took it down to \$100 for just more than a year. The per diem rate was then increased to \$800. Prior to June 2008 when the rate was \$800 a day, PERB issued contracts with a maximum of \$4,000, subject to an amendment request by the factfinding chairperson to increase that maximum amount. Mr. Chisholm stated that PERB's factfinding contracts are issued based on a daily rate, plus travel costs and any other necessary expenses. The contracts are issued for a maximum amount for factfinding services and not necessarily by

the number of days. He explained that there is an operating assumption that a “typical” factfinding would require two or more days of the chairperson’s time. This would include the day(s) held for hearing, panel discussions and, if needed, time allowed to write the report. The chairpersons were paid \$800 per day for hearings and \$800 per eight-hour blocks of time needed to complete the work, plus any travel and other expenses.

Member Dowdin Calvillo asked for clarification of whether a contract was paid, inclusive of per diem, travel and other expenses, and capped at \$4,000 unless an amendment was sought by the chairperson. She asked if this cap would apply regardless of, for example, exorbitant travel expenses.

Mr. Chisholm responded that the \$4,000 maximum contract amount applied unless the factfinding chairperson requested and provided an approved rationale for increasing that maximum. He explained that amendments were not an automatic process, but it is not unusual, where a need was identified, for a contract to be amended due to an unordinary increase in travel costs or more typically the number of hearing days required. He then confirmed as correct Member Wesley’s inquiry that, pursuant to the charts in one of the documents provided, factfinding contracts are not set by a daily rate but by a dollar amount reflective of an average number of days that a typical factfinding would require.

Member Dowdin Calvillo wanted to know how often factfinding contracts are amended to increase the maximum amount. Staff responded that without research an exact answer could not be provided. Eileen Potter, Chief Administrative Officer, offered that a “good handful” of contracts had probably been amended. She explained that with 24 contracts issued at \$4,000, if the contracts were at the full amounts, factfinding costs were exceeded by \$1,500-\$1,600. This would include some contracts coming in at \$0 and others paid at just costs.

Mr. Chisholm added that factfinding contracts are amended less than half of the time. He agreed that there was a wide variance of costs claimed under these contracts. There are various instances where: (1) the case settles, therefore, the factfinder incurs no expenses and then does not bill for any time; or (2) the factfinder submits a bill for the minimal time connected with arranging for a hearing or talking to the parties about the issues; or (3) an amendment is justified and approved because of the number of issues involved or the difficulty of the dispute there has been a substantial number of days invested, often in settlement efforts with the parties as well as hearing days.

Member McKeag inquired whether any factfinding proceedings were held by telephone conference. She stated her awareness of the parties’ need at times to meet in person during the factfinding process, but perhaps teleconferencing could help to cut down on costs.

Mr. Chisholm stated that often discussions among the three panel members for executive sessions, both pre- and post-hearing, and conversations needed regarding writing the report are by teleconference. He was not sure what percentage of the time teleconferencing occurred and did not want to discount the fact that the panel members do also meet in person. He stated that he was not aware of any hearings that were held by telephone conference. One change that was made a number of years ago in an attempt to control travel costs was that chairpersons

were appointed on a geographic basis. Therefore, a chairperson who resides or has a business in Southern California was assigned a factfinding case in that same area, or if a Northern California chairperson took a factfinding case from Southern California they would agree to bill as if they resided in Southern California.

Member Dowdin Calvillo commented about a statement made at PERB's last public meeting regarding the State Commission on Mandates' statutory obligation to reimburse school districts for expenses related to factfinding. She informed the Board that, at this time, those reimbursements no longer occur given tough fiscal times.

Ms. Potter added that, according to her conversation with staff in the Education Section at the Department of Finance, there were no ongoing funds appropriated for mandated expenses for factfinding and she confirmed that in the past year no such costs had been paid.

Chair Neuwald stated that it was also her understanding that while these mandated costs were not being paid that nonpayment does not take away the liability of the mandate. The liability for all mandates within the State, although not currently being paid, is still there. She invited members of the public to speak to this issue in their comments to the Board.

Chair Neuwald opened the meeting for public comment.

Doug Brown, Assistant Executive Director, representing the School Employers Association of California (SEAC) addressed the Board. He stated that SEAC represents more than 150 school districts, community college districts and county offices of education throughout the State that affect the lives of approximately two-million students. He first wanted to emphasize that the factfinding budget problem was not PERB's alone; it is a collective problem shared by labor, management and PERB in a partnership created by the Legislature.

Mr. Brown stated that Government Code section 3540 promotes "the improvement of personnel management and employer-employee relations within the public school systems in the State of California" and in section 3541.3(n) PERB can "take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter." He continued stating that the action being considered today violates that mandated legislative partnership, and suggested a historical perspective the Board might appreciate and find useful: In 1988, PERB initiated training in labor-management cooperation, which contributed to improved relations in the educational committee. After a brief time, PERB was directed by the Legislature to cease this activity and the training was continued by the California Foundation for the Improvement of Employee-Employer Relations. As directed by the Legislature, PERB's cessation of its cooperative training programs contributed to an increasing number of labor disputes, which in turn led to a more active use of impasse procedures and as a result more factfindings. Mr. Brown stated that the factfinding dilemma being faced today is a direct result of this legislative direction and also the Legislature's failure to honor the responsibility to fund what it enacts. At the very least, Mr. Brown suggested, the Legislature should correct this mistake and provide funds for factfinding.

If the per diem rates are set too low because of this dilemma, Mr. Brown said, most qualifying factfinding chairs will decline to serve. As a result, the parties may not have sufficient choices for a factfinding chairperson, serious delays could occur and the parties would then be forced to fund factfinding services themselves. He stated if that happens it could be argued that the funds used for educational programs for students could be reduced to cover the costs of factfinding. In essence, he opined, PERB would only be giving the appearance that it was meeting its statutory obligation. He appealed that PERB and its constituents work on this factfinding dilemma together.

Mr. Brown concluded offering two suggestions and commenting about the liability-of-mandates issue previously discussed. He asked if those “served by PERB, after mediation has failed, agree to end the impasse process and implement last, best and final, and strike without either of these actions being ruled as illegal.” He suggested first that all concerns expressed at today’s meeting, also in writing, regarding “our” factfinding problem be included in PERB’s expanded decision and in any official action taken. And as a second suggestion, Mr. Brown stated that PERB should seek special funding or an enhanced transfer of funds from the Legislature to pay for factfinding. As a final note, Mr. Brown acknowledged that the mandated costs for collective bargaining were not being paid, and that the liability for these mandated costs continues and could be recouped at a later time. His thought was that factfinding could be viewed as the same.

Dom Summa, representing the California Teachers Association (CTA), addressed the Board stating that CTA has more than 340,000 members who are teachers and education support groups throughout the State. Mr. Summa stated that PERB is facing a budget dilemma much the same as many school districts by being forced to look at budgets, prioritize expenditures and get the most value out of those dollars. His thought was that factfinding is viewed as a valued service throughout the State. Looking at the number of impasses, mediations and factfindings, he stated, there has been a sharp decline in factfindings over the last ten years mainly due to settlement of the case, although there are still parties who engage in bargaining that lead to those measures.

Mr. Summa continued that if PERB were to set the rates too low it would create a frustration for the parties in terms of timelines under which to work. The results would also be (1) a reduced pool of factfinders, as evidenced by the \$100 rate cut several years ago, (2) delays will be created, and (3) some settlements reached during factfinding would lead toward agreements the parties were not entirely happy with. He stated that with factfinding there has been a drop in the number of days lost based on work stoppages and that settlements have been reached at the factfinding hearing.

Mr. Summa commented about mandated costs and the use of technology in factfinding. He stated that mandated costs are accrued from year-to-year and that the districts continue to track those expenditures so that they may, when money is available, recoup those costs. It may be necessary for districts to go back several years to get reimbursed for those expenditures. Regarding the use of technology, Mr. Summa said that for most all activities in factfinding, except the hearing itself, teleconferencing is widely used by panel members throughout the State. This would include any executive sessions and discussions regarding writing the report,

if needed. These measures have helped to cut down on travel costs which might be associated with the factfinding.

Mr. Summa concluded stating that he would not reiterate arguments he made at PERB's public meeting several weeks ago, but thought that it was important that the Board look at and maintain the rate at an amount that will attract the most qualified factfinders. He again offered to meet and discuss ways to develop cost-saving options through technology or other use. The rate paid for factfinding is below the per diem arbitrators are usually paid and he strongly urged PERB not to reduce the current amount paid.

Member Dowdin Calvillo asked Mr. Summa about the possibility, which he mentioned at the last public meeting, for fewer days of factfinding. She also wanted confirmation that a sufficient job could be done in factfindings with the number of days being shortened, which would equate to a lesser amount being claimed and then paid by PERB.

Mr. Summa responded that he did mention at that meeting that CTA would be willing to meet and discuss the length of hearings, for example. He stated that, while there is a statutory requirement that the parties are able to present their case at a hearing, it is also important for the parties to meet face-to-face with panel members. This face-to-face meeting can allow the panel members time to work with the parties to possibly settle the case before a report is even written. Mr. Summa reiterated that CTA would be willing to meet, look at hearing days and find a number of days that would work for everyone.

Mr. Summa then said that it was his thought that factfinding hearings could be conducted in one day, with just a few exceptions. While this should not be looked at as an absolute rule, given the number of issues brought to factfinding, probably 90 percent or more of factfinding hearings could be done in one day.

Greg Eddy, representing the California Federation of Teachers, stated that under Government Code section 3593(b) it was PERB's responsibility to appoint and pay the costs for factfinding chairpersons. It was understood that PERB's budget had been reduced; however, it did not change PERB's legal responsibility. He mentioned that it was PERB's essential mission to create harmonious labor relations and PERB has been very successful in accomplishing this. Factfinding has been a very useful tool that has helped to solve many problems, bring about respectful relations during contentious times and, most importantly, helped to significantly reduce the number of strikes in the education sector to almost zero.

Several years ago PERB reduced factfinding fees paid to chairpersons to \$100 per day, Mr. Eddy stated that PERB should not look at this as a possible solution. He urged that PERB, in fact, continue to pay the \$800 per day with the \$4,000 contract maximum. Reiterating, he gave the following reasons for this suggestion. First, it is PERB's statutory obligation and "to pass the buck" to school districts and unions who are equally suffering in this recession is "unfair and inappropriate." Second, it would be "discriminatory." Large districts would not be affected by any decision made by PERB in this regard, but most school districts and unions in the State are small, and it would have an enormous impact on them. If these smaller districts and unions are forced to settle at mediation with an agreement that is not satisfactory,

animosity could result and that would not be good for anyone. Mr. Eddy stated that a two-tiered system of factfinding could result; one for large districts and another for the smaller districts which would be dangerous for everyone. Third, costs would increase. As he mentioned before, the costs paid to factfinding chairs are significantly lower than what they are paid when they work as arbitrators where in many instances they receive \$1,500-\$2,000 per day. If PERB were to reduce its fees to an artificially low amount and the parties were forced to hire their own factfinding chairs, costs would rise accordingly as it did when PERB previously lowered the rate to \$100 per day. Mr. Eddy also believes that there is the possibility of unintended consequences. What happens if one party is willing to pay for a factfinding chair and the other party is not, or if both parties refuse to pay because they believe it is PERB's obligation? The district may attempt to impose a settlement or the union may consider a strike. This is not in anyone's best interest, and with what the costs of those actions might ultimately equal, one might question why we are being "pennywise and pound foolish." In conclusion, Mr. Eddy stated that PERB has worked tirelessly, ceaselessly and successfully with labor and management to find ways to resolve differences between parties. He suggested that this be done with factfinding and that PERB work collectively with constituents to find ways to reduce the costs of factfindings so that a status quo, which has been working for everyone, is maintained.

Member Dowdin Calvillo wanted to know from PERB staff, of the approximately 85 contracts issued by PERB since Fiscal Year 2004-2005, how many were generated from "large" versus "small" school districts. Ms. Bogert responded that PERB does not currently categorize or track information in this way.

Member Dowdin Calvillo asked Mr. Eddy what constituted a "small" district versus a "large" district. Mr. Eddy responded that under 400-500 members would be considered a relatively small union and then deferred to Mr. Brown who estimated that 3,000 average daily attendance would constitute the definition for large districts.

Mr. Eddy added that he represents both small and large groups. As an example during the time when the rate was lowered to \$100, he stated that he represented a small district where a mediated settlement that neither party liked was accepted, and that this is not good for labor relations. He concluded that he has also been on factfinding panels where they have met for one day, resolved the issue without a report being written, and that this has frequently been his experience in most cases.

Steve Henderson, representing the California School Employees Association (CSEA), stated that a CSEA representative spoke at PERB's last public meeting and he would briefly address the Board. He stated that factfinding is central to PERB's existence and makes it possible for parties to bargain contracts and resolve issues. Currently, times are difficult for classified employees who can be laid off with 45 days notice. He stated that because there have been many layoffs, bargaining has been very difficult. If PERB does not fund factfinding properly, unintended consequences could occur such as increased injunctive relief requests. As has been the consensus today, budget difficulties are being experienced by schools and community college districts, as well. Mr. Henderson urged PERB to continue to adequately fund

factfinding to ensure good contracts, and to avoid additional unintended and costly consequences.

Mary Ann Massenburg, representing UAW Locals 2865 and 4123, spoke before the Board. She explained that Locals 2865 and 4123 are public sector locals representing more than 19,000 members in the University of California and California State University systems, teaching assistants, readers, tutors and graders. She stated the awareness of and that all were sympathetic to PERB's budget difficulties, but urged PERB to continue to pay the full cost of the third-party factfinder. PERB has a statutory obligation under Higher Education Employer-Employees Act (HEERA) section 3590(b) and the other acts it administers to pay for factfinding. Ms. Massenburg stated as a fact that although the funds to pay for factfinding were cut from PERB's budget, the trailer bill with language that would have eliminated PERB's statutory obligation to provide these services was not approved by the Legislature. She said that it was UAW's thought that PERB was attempting to accomplish administratively that which did not happen legislatively. Paying for factfinding means providing a reasonable rate and the going rate for arbitrators, as noted by numerous speakers, is much higher than the \$800 daily rate paid by PERB. UAW supports keeping, at a minimum, the rate at \$800 per day.

Ms. Massenburg continued and stated her belief in a situation unique to HEERA. HEERA does not specifically provide that the parties pay for a third-party factfinding chairperson, even if that person is mutually selected by the parties rather than appointed by PERB. She stated that this supports the notion that the statute anticipates that PERB will pay for factfinding services. PERB requires and the State mandates that the parties engage in factfinding during the impasse procedure. If PERB continues to require factfinding as part of this impasse procedure, then it should meet its statutory obligation to pay for the chairperson. While possibly not a position universally held, UAW believes that if PERB does not pay, participation in factfinding should be voluntary, not mandatory. As an alternative solution, Ms. Massenburg suggested, as she had at a past Advisory Committee meeting, that in some factfinding cases PERB staff could act as the third-party factfinder. She stated her realization of the impact this potential alternative might have on caseloads at PERB and other problems it may present.

Chair Neuwald commented regarding the testimony presented about legislative direction. While not disagreeing with any comments made, she wanted to point out that during the budget hearing process questions were asked about factfinding. She stated that some of the perspectives offered here today and at PERB's last public meeting would likely have proven helpful if presented at the budget hearings and likewise very valuable when the Legislature deliberated on PERB's budget. As with many others, the Legislature is faced with difficult decisions while trying to develop the State budget.

David Balla-Hawkins, Legislative Director for the California Faculty Association (CFA), which represents 25,000 faculty, counselors, teachers and librarians who teach in the CSU system, addressed the Board. He pointed out that a letter had been prepared and sent to PERB regarding its statutory obligation to fund factfinding. This letter was made available to the public at today's meeting. He stated that it was a continued belief that without statutory



change, PERB is obligated to provide factfinding. CFA, together with many labor groups he surmised, will continue to ardently oppose any attempts to release PERB from this responsibility. Mr. Balla-Hawkins stated that a primary concern is how factfinding costs would interact with mandatory impasse procedures if the parties were to share some of these costs. As outlined in CFA's letter, given that participation in the impasse procedure is mandatory once invoked and a refusal to participate in that process is an unfair labor practice, it is believed that PERB's release from the obligation to pay will allow one party to unilaterally force considerable costs onto another simply by imposing the impasse procedure. He stated as an example, where there is a large employer and small labor group, or vice versa, it is believed that the larger party could gain a considerable bargaining advantage by merely invoking the statutory impasse procedure. There was an expressed concern about how these two issues would interact if the costs of factfinding were shared by labor, together with PERB.

Mr. Balla-Hawkins spoke about the actual funding of factfinding by PERB. Reading a chart in a document prepared and provided by PERB, he stated that factfinding costs appear to comprise only 1.5 percent of the Board's budget. He stated that he came from an institution with close to a 20 percent reduction and believed it should be within PERB's means to find the \$85,000 to pay for factfinding.

Mr. Balla-Hawkins continued that he appreciated Chair Neuwald's comments regarding the budget subcommittee hearings and that communications had broken down with regard to the funding of factfinding. Had it not been for this communication breakdown, labor would have worked very hard with PERB to ensure that funding for factfinding was not cut from PERB's budget. He offered CFA's assistance with securing additional appropriations if PERB could not incorporate factfinding costs into its existing budget. Mr. Balla-Hawkins stated that CFA would continue to ardently oppose any attempt by PERB to weaken, dilute or in any other way lessen the importance and benefits of factfinding.

Chair Neuwald at this time acknowledged written correspondence received and made available by PERB to the public at today's meeting from CFA and the law firm of Altshuler Berzon on behalf of the Service Employees International Union, California State Council.

Mr. Balla-Hawkins concluded and offered one additional suggestion: that a special hearing be arranged in the labor committee in both the Senate and the Assembly to discuss funding for factfinding. His thought was that after discussions about the possible implications to employer and employee relations, endorsements from those committees may help with additional appropriations for PERB.

Caitlin Vega, representing the California Labor Federation, then addressed the Board. She said she wanted to echo many of the concerns expressed by the unions. Representing both public and private unions, she stated that given the economy, a tremendous increase in labor strife could be anticipated. This anticipation could include employers across the board asking for more concessions, and unions trying to defend members' rights and opposing such things as contracting out and other ways of reducing the workforce. She stated that it was in this context that factfinding becomes especially important as one of the few tools to mediate disputes, find ways to avoid impasse and ultimately strikes. Ms. Vega urged PERB to find a way, given the

challenges in this budget economy, to continue to provide factfinding services which will help promote harmonious labor relations. She added that not only is factfinding viewed as an important tool for resolving disputes, there is the fear that new disputes will be created at a time when parties are already struggling to work together to find ways to address the financial situation being faced by all. She concluded that these new issues and problems will make it even harder for parties to reach agreement.

Member McKeag had a question regarding the PERB Advisory Committee Meeting that Ms. Massenburg mentioned when she spoke to the Board. She had not attended the meeting and wanted to know what the general discussions were and any resulting suggestions regarding factfinding. It was Member McKeag's thought that another meeting could be scheduled and that this open forum could be used to provide an opportunity for collaborative discussions and suggestions on this subject.

Ms. Massenburg responded that at the Advisory Committee Meeting held this summer, and the prior meeting, there was brief discussion about factfinding. At that time there was no knowledge of what was happening with the State's budget and, therefore, there were no specific discussions about factfinding in this regard. At the Advisory Committee Meeting, Chair Neuwald asked the participants' views about factfinding to which employers and unions alike expressed much of the same that was heard today; factfinding is a very useful tool. Ms. Massenburg said she spoke at the meeting about how, at least under HEERA, factfinding at times tended to prolong disputes between the parties because it creates an additional timeframe. She stated that after going through mediation as part of the impasse procedure, sometimes factfinding was found to cause a delay because occasionally the parties would withhold their final position in anticipation of mediation and factfinding. In the higher-education sector, there were a couple cases where it was found that factfinding did not enhance reaching an agreement absent the impasse process. Ms. Massenburg stated that she had also suggested at one of the Advisory Committee Meetings, as she had today, some cases being assigned to PERB staff as factfinding chairperson, but there was no wide discussion on that idea.

Chair Neuwald asked if there were any other members of the public who would like to comment. Seeing no other public comments, she moved the meeting for comments from PERB Board Members and began with brief comments herself. She expressed her appreciation to members of the public who came today to offer their perspectives on factfinding, and their steady interest, support and input on various issues regarding PERB and its functions. She stated that with difficult budget times, PERB's budget is extremely tight and any determination regarding this issue would be difficult. She stated that she also appreciated the comments regarding PERB's statutory obligation to provide factfinding services, but that under the seven acts it administers, PERB must implement, manage and perform duties under all of those statutes. It is a difficult balancing act to spread resources to effectuate the total purposes of PERB's mission. Chair Neuwald stated that, as mentioned by Member Wesley at the last public meeting with concurrence by the full Board, PERB supports and views factfinding as a valued service. In this tight budget economy, PERB will balance various issues while maintaining the viability of the agency as a whole so that all statutory mandates are met,

including factfinding. She then opened the meeting for discussion and, if appropriate, a motion.

Member Wesley commented and wanted to give a brief historical perspective with emphasis on PERB's budget. She thanked PERB staff for the documents prepared with a focus on factfinding and talked about the chart that shows where money is allocated within the agency. Although funds for factfinding appear relatively small, PERB is a small agency with just over a \$6 million budget. In 2001-2002 when the Meyers-Milias-Brown Act was added to PERB's jurisdiction, the agency was to get additional funding and staff to handle the enormous additional workload. That funding and staff was cut before receipt of the final authority to provide PERB jurisdiction for that act. The agency was then faced with an increased workload, but with no additional staff to perform the increased duties. Member Wesley stated that it was also about this time that factfinding was cut to \$100. Thereafter, the State's budget improved and PERB was granted authorizations to fill various positions. These authorizations by the Legislature and the Administration continued until the 2008-2009 fiscal year when a 10 percent cut was sought from all State agencies. Therefore, the appropriations and staffing were authorized, on the one hand, and the budget cut, was on the other. Member Wesley believed that, in essence, the Administration acknowledged that PERB was lean and could not afford these kinds of cuts.

Member Wesley continued that through the 2008-2009 legislative budget process PERB lost its funding for factfinding, but the Legislature did restore \$140,000 to the agency to prevent the closure of one of its offices. So again, Member Wesley stated, there was acknowledgement by both the Legislature and the Administration that times are very lean for PERB. Very soon after the current budget was passed, another cut was made; PERB's share was \$67,000 (approximately 1 percent). The Governor and Legislature are also currently in discussions about more budget cut considerations. She stated her past optimism about the authorizations for additional staff and by the support all the way through the budget process from the Department of Finance, the Legislature and the Governor's Office. Currently, PERB is again facing very difficult decisions because of budget reductions.

Member Wesley concluded stating that she too thought Advisory Committee meetings were a good idea as a forum to discuss ways of making the factfinding process more cost effective.

Member Dowdin Calvillo added that last month California revenue fell about \$1 billion short of projection and additional cuts will likely be the result to PERB's budget as well as school districts. She stated that the \$67,000 reduction recently incurred by PERB will not likely be the last budget cut to the agency. Member Dowdin Calvillo agreed that, as mentioned by Chair Neuwald, PERB will have to balance the needs of all its constituencies and ensure that the integrity of its statutory requirements are maintained.

There was then general discussion at the meeting about possible actions regarding factfinding. Member McKeag, concurring that this was a collective problem, recommended that at some future date an Advisory Committee Meeting be scheduled to discuss this matter. Member Dowdin Calvillo agreed that a collaborative discussion on this issue would be very beneficial and that she would be very interested in hearing ways that the factfinding process could be

streamlined. She asked about how a delay in a decision regarding factfinding costs would affect requests currently pending. General Counsel Tami Bogert confirmed that any delay of a decision in this matter would affect PERB's ability to respond to the two requests pending. She also confirmed that there is a statutory timeframe within which to respond to factfinding requests.

Member Dowdin Calvillo again mentioned that she would be very interested in hearing how the factfinding process could be streamlined, but was concerned what fiscal impact delaying this decision would have on the Board. She thought that a restriction on costs would have to be made sooner rather than later. Any delay in a decision would affect the pending requests and could result in contracts being paid at the current rates for factfinding. To do this, PERB would have to divert funding from other services to cover those costs. She further stated that although it was mentioned earlier in discussions today that factfinding was budgeted at \$85,000 last year—approximately 1.5 percent of PERB's total budget, this percentage is not an accurate reflection of funds that may be made available for services such as factfinding given that of PERB's budget, 81 percent is dedicated for staff salaries. This leaves the remaining 19 percent of PERB's budget available for all of the Board's operating and equipment expenses including factfinding.

Chair Neuwald stated, and Members McKeag and Wesley agreed, that a decision regarding factfinding should be made sooner rather than later. Member Wesley added that should PERB receive help from its constituents through the Legislature and mid-year allocations are granted, this matter can be revisited. She stated that any delay could be detrimental to other parts of PERB's budget, staff and offices. Member McKeag stated that a future Advisory Committee Meeting could be helpful because budget problems could continue into the next several years.

Member Wesley asked PERB staff if a new rate is set, could there also be a cap on the number of days. Ms. Bogert responded that it was within the Board's discretion to not only set a daily rate, but also a contract—duration cap and/or a cap on the contract total—dollar amount. Member Dowdin Calvillo then suggested that, as discussed at the meeting today, factfinding costs could be cut by setting a limit on the number of days in a contract.

Member Dowdin Calvillo thereafter made a motion to set the factfinding daily rate at \$300 per day with a two-day contract cap. She stated her motion needed a second before discussion of the motion could ensue.

Chair Neuwald asked for a second to Member Dowdin Calvillo's motion. Seeing none, she asked for an alternative motion.

Member Wesley made a motion for a rate of \$100 per day with a two-day contract maximum. She proposed this motion asking that PERB staff keep the Board apprised of costs incurred and that this matter may need to be revisited should the agency's budget situation change due to additional cuts or any other unforeseen expenses.

Chair Neuwald seconded Member Wesley's motion.

After inquiry by Member McKeag, there was discussion about the number of days for factfindings. Ms. Bogert stated that over the last three fiscal years (2005-2006, 2006-2007 and 2007-2008), the average number of days for factfinding is three. She confirmed Member Dowdin Calvillo's stated understanding that in Fiscal Year 2007-2008 there were two cases where more than nine days of factfinding occurred and that this increased the cited average.

Member Wesley asked PERB staff when the rate was previously reduced to \$100, was there also a cap on the number of days. She also commented about the number of factfinders (10) who were available at that rate.

Mr. Chisholm responded that the contract amount was reduced, but there was no cap on the number of days. At that time, the contract amount was initially set at \$500 allowing for two or more days, plus expenses. He confirmed that there were 10 factfinders who remained eligible, with some on an extremely limited basis. Specifically, there were only two or three factfinders who were willing to take any or most cases that were offered by PERB.

Member Wesley stated that she wished to amend her previous motion [for factfinding at \$100 per day with a maximum two-day contract duration] to a \$100 daily rate with a maximum three-day duration and again said that the matter may need to be revisited should PERB's budget circumstances change. Chair Neuwald seconded amending this motion.

**Motion:** Motion by Member Wesley and seconded by Chair Neuwald to amend the previous motion that the rate for factfinding services be set at \$100 per day with a two-day contract maximum.

**Ayes:** Neuwald, McKeag, and Wesley.

**Nay:** Dowdin Calvillo.

**Motion Carried.**

**Motion:** Amended motion by Member Wesley and seconded by Chair Neuwald that the rate for factfinding services be set at \$100 per day with a three-day contract maximum.

**Ayes:** Neuwald, McKeag, and Wesley.

**Nay:** Dowdin Calvillo.

**Motion Carried.**

### **General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through December 11, 2008 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending

litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member McKeag that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Neuwald, McKeag, Wesley, and Dowdin Calvillo.

**Motion Carried.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Karen L. Neuwald, Chair